

DAE
ETW



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Joan D. LEONARD et al.
SERIAL NO. : 10/825,391
FILING DATE : April 14, 2004
FOR : VACCINES FOR MYCOPLASMA BOVIS AND
METHODS OF USE
EXAMINER : Ford
GROUP ART UNIT: 1645

MAIL STOP PETITION
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on :

Date:

August 17, 2007

Signature:

Genevieve P. Chuaycong

PETITION UNDER 37 C.F.R. §1.78 TO ACCEPT LATE PRIORITY CLAIM

Sir:

This Petition is being filed to request acceptance of a late claim for priority.

37 C.F.R. §1.78(a)(2)(i) states that a non-provisional application seeking to claim the benefit of a prior-filed non-provisional application "must contain or be amended to contain a reference to each such prior-filed application."

08/22/2007 HVUONG1 00000007 110600 10825391

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(2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

37 C.F.R. §1.78(a)(2)(ii) states that the reference to the prior-filed application for which benefit is sought in 37 C.F.R. §1.78(a)(2)(i) must be submitted “within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application.”

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. . . .

37 C.F.R. §1.78(a)(3) states that, if the priority claim required by 37 C.F.R. §1.78(a)(2)(i) is presented after the time period specified in 37 C.F.R. §1.78(a)(2)(ii), the priority claim may nevertheless be accepted, provided the delay between the period when the claim for priority was due and the time the priority claim was made was unintentional.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. . . .

U.S. Patent Application Serial No. 10/825,391 (hereinafter “the present application”) was filed on April 14, 2004. The transmittal sheet accompanying the filing of the present application claimed priority from U.S. Patent Application Serial No. 10/726,029 and from U.S. Provisional Patent Application Serial No. 60/164,286. The transmittal sheet inadvertently omitted a claim for priority from U.S. Patent Application Serial No. 09/708,352. See Exhibit A, a copy of the transmittal sheet that accompanied the filing of the present application.

In a Second Preliminary Amendment, filed March 2, 2005, the specification of the present application was amended to claim priority from U.S. Patent Application Serial No. 09/708,352, as well as from the applications listed on the transmittal sheet. See Exhibit B, a copy of the Second Preliminary Amendment.

The later of four months from the April 14, 2004 filing date of the present application or sixteen months from the November 8, 2000 filing date of U.S. Patent Application Serial No. 09/708,352 was August 14, 2004, four months from the filing date of the present application.

Thus, the priority claim for benefit of U.S. Patent Application Serial No. 09/708,352 made in the Second Preliminary Amendment was late.

This Petition is being filed to request acceptance of the late priority claim for benefit of U.S. Patent Application Serial No. 09/708,352 made in the Second Preliminary Amendment.

37 C.F.R. §1.78(a)(3) states that a Petition to accept an unintentionally delayed priority claim must include:

- (i) the priority claim, unless previously submitted;
- (ii) the fee set forth in 37 C.F.R. §1.17(t); and
- (iii) a statement that the entire period between the time the priority claim was due and the time the priority claim was made was unintentional.

(3) . . .

. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t);
and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

These requirements are satisfied in the present Petition.

(i) the priority claim has already been submitted (see Exhibit B).

(ii) a request to pay the required fee appears below.

(iii) the undersigned certifies that the entire period of delay was unintentional. That is, the entire period of delay between August 14, 2004, four months after the filing date of the present application, and March 2, 2005, the date on which the priority claim for benefit of U.S. Patent Application Serial No. 09/708,352 was made in the Second Preliminary Amendment, was unintentional.

The above requirements being satisfied, it is respectfully requested that this Petition be granted and that the claim for benefit of U.S. Patent Application Serial No. 09/708,352 in the present application be accepted.

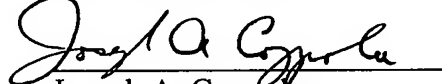
Should this Petition be granted, it is further requested that the continuing data portion of the Bibliographic Data Sheet in the records of the United States Patent and Trademark Office for the present application be changed to reflect that the present application claims priority from U.S. Patent Application Serial No. 09/708,352.

It is believed that the fee required for this Petition under 37 C.F.R. §1.17(t) is \$1,370.00. Please charge the required fee to Kenyon & Kenyon's Deposit Account No. 11-0600.

The Applicants hereby make a Conditional Petition for any relief available to correct any defect seen in connection with this filing, or any defect seen to be remaining in this application after this filing. The Commissioner is authorized to charge Kenyon & Kenyon's Deposit Account No. 11-0600 for the Petition fee and any other fees required to effect this Conditional Petition.

Dated: AUG. 17, 2007

Respectfully submitted,


Joseph A. Coppola
Reg. No. 38,413

KENYON & KENYON
One Broadway
New York, NY 10004
Tel.: (212) 452-7200
Fax: (212) 452-5288

(2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

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(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. . . .

37 C.F.R. §1.78(a)(3) states that, if the priority claim required by 37 C.F.R. §1.78(a)(2)(i) is presented after the time period specified in 37 C.F.R. §1.78(a)(2)(ii), the priority claim may nevertheless be accepted, provided the delay between the period when the claim for priority was due and the time the priority claim was made was unintentional.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. . . .

U.S. Patent Application Serial No. 10/825,391 (hereinafter “the present application”) was filed on April 14, 2004. The transmittal sheet accompanying the filing of the present application claimed priority from U.S. Patent Application Serial No. 10/726,029 and from U.S. Provisional Patent Application Serial No. 60/164,286. The transmittal sheet inadvertently omitted a claim for priority from U.S. Patent Application Serial No. 09/708,352. See Exhibit A, a copy of the transmittal sheet that accompanied the filing of the present application.

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- (i) the priority claim, unless previously submitted;
- (ii) the fee set forth in 37 C.F.R. §1.17(t); and
- (iii) a statement that the entire period between the time the priority claim was due and the time the priority claim was made was unintentional.

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17681 U.S. PTO

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICEUTILITY PATENT APPLICATION
TRANSMITTAL LETTER
UNDER 37 C.F.R. 1.53(b)ATTORNEY DOCKET NO.:
12780/10317681 U.S. PTO
10/825391

Address to:
Mail Stop: Patent Application
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Transmitted herewith for filing is the patent application of:

Inventor(s): **Joan D. LEONARD and Robert W. TULLY**

For: **VACCINES FOR MYCOPLASMA BOVIS AND METHODS OF USE**

Enclosed are:

1. 23 sheets of specification, 2 sheets of claims, and 1 sheet of abstract.
2. 2 sheets of drawings.
3. Declaration (copy from prior application (37 CFR 1.63(d)
(See 4 below).
4. Incorporation by Reference. The entire disclosure of the prior application; from which a copy of the oath or declaration is supplied under paragraph 3 above is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.
5. Also enclosed:
Preliminary Amendment Statement under 37 C.F.R. 3.73(b)
Return Receipt postcard Power of Attorney By Assignee of Entire Interest
Information Disclosure Statement and 1449 Form
6. Continuing application information:

This application is a divisional of U.S. Patent Application Serial No. 10/726,029 filed on December 1, 2003 which claims benefit of U.S. Patent Application Serial No. 60/164,286 filed on November 8, 1999.

7. Applicant is a small entity and is entitled to small entity status

8. The filing fee has been calculated as shown below, after entry of the accompanying Preliminary Amendment

	NUMBER FILED	NUMBER EXTRA*	RATE (\$)	FEE (\$)
BASIC FEE				770.00
TOTAL CLAIMS	10 - 20	0	18.00	
INDEPENDENT CLAIMS	2 - 3=	0	86.00	
MULTIPLE DEPENDENT CLAIM PRESENT				290.00 0.00
*Number extra must be zero or larger			TOTAL	770.00
If the applicant is a small entity under 37 C.F.R. §§ 1.9 and 1.27, then divide total fee by 2, and enter amount here.			SMALL ENTITY TOTAL	385.00

10. Please charge the required application filing fee of **\$385.00** to the deposit account of **Kenyon & Kenyon**, deposit account number **11-0600**.

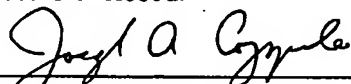
11. The Commissioner is hereby authorized to charge payment of the following fees, associated with this communication or arising during the pendency of this application, or to credit any overpayment to the deposit account of **Kenyon & Kenyon**, deposit account number **11-0600**.

- A. Any additional filing fees required under 37 C.F.R. § 1.16;
- B. Any additional patent application processing fees under 37 C.F.R. § 1.17;
- C. Any additional patent issue fees under 37 C.F.R. § 1.18;
- D. Any additional document supply fees under 37 C.F.R. § 1.19;
- E. Any additional post-patent processing fees under 37 C.F.R. § 1.20; or
- F. Any additional miscellaneous fees under 37 C.F.R. § 1.21.

12. A duplicate copy of this sheet is enclosed.

Dated: April 14, 2004

By:


Joseph A. Coppola (Reg. No. 38,413)

KENYON & KENYON

One Broadway

New York, NY 10004

(212) 425-7200 (phone)

(212) 425-5288 (facsimile)

Customer No. 26646

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE			
SECOND PRELIMINARY AMENDMENT		Docket Number: 12780/103	
Application Number 10/825,391	Filing Date April 14, 2004	Examiner Not Yet Known	Art Unit 1645
Title VACCINES FOR MYCOPLASMA BOVIS AND METHODS OF USE		Applicant(s) Joan D. LEONARD et al.	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

Date: MARCH 2, 2005
By: Joseph A. Coppola
Joseph A. Coppola (Reg. No. 38,413)

SIR:

Enclosed please find a Second Preliminary Amendment transmitted herewith for filing in the above-identified patent application.

No fee is believed to be required. However, if any fee is required, the Commissioner is hereby authorized to use Deposit Account No. 11-0600. A duplicate copy of this transmittal letter is enclosed for that purpose.

Dated: MARCH 2, 2005

By: Joseph A. Coppola
Joseph A. Coppola (Reg. No. 38,413)
KENYON & KENYON
One Broadway
New York, N.Y. 10004
(212) 425-7200 (telephone)
(212) 425-5288 (facsimile)
CUSTOMER NO. 26646

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Joan D. LEONARD et al.
SERIAL NO. : 10/825,391
FILING DATE : April 14, 2004
FOR : VACCINES FOR MYCOPLASMA BOVIS AND
METHODS OF USE
EXAMINER : To Be Assigned

GROUP ART UNIT: 1645

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

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United States Postal Service with sufficient postage as first class mail
in an envelope addressed to:

Mail Stop _____
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
on

Date: 3/2/05

Signature: *M. S. [Signature]*

SECOND PRELIMINARY AMENDMENT UNDER 37 C.F.R. §1.115

Sir:

Prior to examination on the merits, please consider the following amendments and
remarks.

IN THE SPECIFICATION:

At page 1, line 2, after the title, please insert the following paragraph:

-- CROSS-REFERENCE TO RELATED APPLICATIONS

This application is a divisional of co-pending prior U.S. Patent Application Serial No. 10/726,029 filed on December 1, 2003, which is a divisional of U.S. Patent Application Serial No. 09/708,352 filed on November 8, 2000, which claims benefit of U.S. Patent Application Serial No. 60/164,286, filed on November 8, 1999, the disclosures of which are incorporated herein, in their entirety.--

No fee is believed due in connection with the filing of this Second Preliminary Amendment. Approval and entry of this Second Preliminary Amendment is respectfully requested.

Dated: MARCH 2, 2005

Respectfully submitted,


Joseph A. Coppola

Reg. No. 38,413

KENYON & KENYON

One Broadway

New York, NY 10004

Tel.: (212) 452-7200

Fax: (212) 452-5288